



By Electronic Delivery

March 31, 2010

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20051

Re: Docket No. R-1343

Dear Ms. Johnson:

The Texas Bankers Association (TBA) appreciates the opportunity to comment on the Federal Reserve Board's (the Board) proposed amendments and clarifications to Regulation E. The Proposed Rule seeks to clarify certain aspects of the Board's November 17, 2009, final rule amending Regulation E to limit the ability of financial institutions to assess overdraft fees for paying automated teller machine and one-time debit card transactions that overdraw a consumer's account (the Final Rule). As the nation's oldest and largest state banking trade association, TBA represents banks of all sizes and charter types. It is on behalf of our more than six hundred members that we submit this letter today requesting the Board consider the following as it adopts its final amendments to Regulation E and the Official Staff Interpretations.

Clarification of Commentary to 17(b)-9.i and ii

TBA appreciates the Board's proposed addition of comment 17(b)-9.i clarifying that when a consumer's negative balance is attributable in part to a check, ACH, or recurring debit card transaction and an ATM or one-time debit card transaction, a bank is not prohibited from charging a daily or sustained overdraft fee. The proposed comment also states that in those instances when "mixed" transactions cause an account to be overdrawn and to trigger sustained overdraft fees, the date on which the sustained overdraft fee may be assessed is determined by the date on which the check, ACH, or recurring debit card transaction was paid into overdraft. This seems consistent with the Final Rule.

However, we do have concerns about one of the assumptions the Board used in proposed comment 17(b)-9.ii to illustrate the application of the rule. Specifically, we are concerned about assumption (d) – the assumption that the institution "allocates deposits to account debits in the same order in which it posts debits." The use of the word "allocates" suggests that banks apply deposits to particular debits, following a specific

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“allocation order” of credits to particular debits – an incorrect assumption that creates confusion. We are not aware of any bank that “allocates” or applies deposits to particular debit transactions, nor do we understand how that might work. As such, we respectfully request the Board to delete assumption (d) from the discussion of the application of the rule and to delete references to allocation order in example b of comment 17(b)-9.ii, or delete example b entirely.

TBA appreciates the opportunity to comment on the Proposed Rule. Please do not hesitate to contact me if you would like to discuss the above in any more detail. I may be reached at (512)472-8388 or via e-mail at: celeste@texasbankers.com.

Sincerely,

A handwritten signature in cursive script that reads "Celeste May".

Celeste May
Assistant General Counsel